

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THELMA R. ABRAMS

PLAINTIFF

VS.

CIVIL ACTION NO. 1:94CV343-D-D

INTERNATIONAL UNION OF ELECTRONIC,
ELECTRICAL, SALARIED, MACHINE AND
FURNITURE WORKERS, AFL-CIO, LOCAL
NO. 794 AND UNITED TECHNOLOGIES
MOTOR SYSTEMS, INC.

DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court upon the motion of the defendant, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, Local No. 794 ("Union"), for summary judgment and the motion of the defendant, United Technologies Motor Systems, Inc. ("UT"), for summary judgment. The defendants contend in their separate motions that no genuine issues of material fact exist in reference to the claim of the plaintiff, Thelma R. Abrams ("Abrams"), that the Union breached its duty of fair representation pursuant to § 301 of the Labor-Management Relations Act. 29 U.S.C. § 158. The defendants also assert that Abrams failed to make out a prima facie case of race discrimination and that there are no genuine issues of material fact as to this claim. Finally, UT submits that Abrams presented no proof that UT breached its collective bargaining agreement and UT is entitled to a judgment as a matter of law on this claim as well. Abrams responds that genuine issues of fact do exist in regard to her hybrid § 301 claims against the Union and UT. She also rebuts the defendants' arguments on her race discrimination claim by asseverating that she has direct evidence of discrimination which negates the requisite of evidence of a prima facie case. The court finds the Union's motion partially well taken and shall grant it in part and deny it in part. Furthermore, the court finds UT's motion for summary judgment also partially well taken and shall grant it in part and deny it in part.

FACTUAL BACKGROUND¹

Abrams is currently employed and has been employed at UT from approximately thirty-one (31) years. She worked as an "assembler B operator" during her first twenty (20) years at UT. Subsequently, she was promoted to the position of inspector in 1983, a Level-3 ("L-3") position. In December, 1992, she put in an application for a promotion to a L-4 position with the company. Gayle Booker, the Human Resources Supervisor at UT, selected five (5) employees for promotions in March, 1993. Abrams was not selected for a promotion at this time. The five employees promoted were Cranford McCullers, a white male; James Johnson, a white male; Wade DeLoach, a black male; John Hill, a black male; and Joe White, a black male.²

At all times pertinent hereto, there was a collective bargaining agreement in force and effect between UT and the Union which governed the terms and conditions of employment at UT. Paragraph 12 of that contract, entitled "NEW JOB OPPORTUNITIES" provides:

Selection will be based on an employee's experience, training, education, ability, discipline record, attendance record and physical ability. Where the qualifications are equal, seniority shall prevail.

Union Contract, Exh. C att. Union Def.'s Motion for Summary Judgment. Subsequent to the L-4 promotions, Abrams filed a grievance protesting her failure to be promoted. The parties disagree as to whether the Union carried her grievance through the three steps preceding arbitration pursuant to the collective bargaining agreement. Abrams alleges that the Union improperly proceeded subsequent to Step 2 of the grievance procedure. In any event, the Union withdrew Abrams' grievance from arbitration and she subsequently filed the present lawsuit. In February 1995, UT promoted Abrams to an L-4 position.

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

¹In a motion for summary judgment, the facts must be construed in the light most favorable to the non-moving party. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994). The court's recitation of the facts in this case reflects this rule.

²Abrams' claims only challenge the promotions of the black males.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. BREACH OF DUTY OF FAIR REPRESENTATION AND COLLECTIVE BARGAINING AGREEMENT

The United States Supreme Court, in DelCostello v. Teamsters, held that an individual employee may bring suit against his employer for breach of a collective bargaining agreement. 462 U.S. 151, 163, 103 S. Ct. 2281, 76 L.Ed.2d 476 (1983). Although normally bound by grievance and arbitration procedures, the Court created an exception for an employee whose union represents him during such procedures in an arbitrary or discriminatory way. DelCostello, 462 U.S. at 164. Such actions constitute a breach of the union's "duty of fair representation." Vaca v. Sipes, 386 U.S. 171, 190, 87 S. Ct. 903, 916, 17 L.Ed.2d 842 (1967). In such a situation, the Court held that not only may a union member sue its employer for a violation of the collective bargaining agreement, but a union member may also sue its union for breach of the union's duty of fair representation. Vaca, 386 U.S. at 190, 87 S. Ct. at 916. A claim of this type has been termed a "hybrid Section 301/fair

representation claim."³ To recover money damages, Abrams must prove both that (1) the Union breached its duty of fair representation, and that (2) UT's action violated the terms of the collective bargaining agreement. DelCostello, 462 U.S. at 164-65.

To prevail under the breach of duty prong, a plaintiff must "adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." Smith, III v. St. Regis Corp., 850 F. Supp. 1296, 1314 (S.D. Miss. 1994) (citing Amalgamated Ass'n of Street, Elec., Railway & Motor Coach Employees v. Lockridge, 403 U.S. 274, 301, 91 S. Ct. 1909, 1925, 29 L.Ed.2d 473 (1991)). This burden is appropriate even when the union member's claim is meritorious. Amalgamated Ass'n, 403 U.S. at 299 (citing need for evidence demonstrating union acted with fraud and dishonesty). The Fifth Circuit has held that "fair representation does not require a union to carry every grievance to arbitration, for the union is given substantial discretion to decide whether and how far a grievance should be pursued." Hammons v. Adams, 783 F.2d 597, 601 (5th Cir. 1986) (citations omitted). In addition, the union is shielded from liability founded upon errors of judgment or negligence. Nunn v. National Fresh Fruit & Vegetable Co., 541 F. Supp. 469, 477 (S.D. Tex. 1982), aff'd, 703 F.2d 556 (5th Cir. 1983).

Abrams complains in the case sub judice that the union did not diligently pursue her grievance, did not take advantage of its rights to properly investigate the matter, did not adhere to the appeal guidelines, and misled Abrams as to the arbitration status of her case. She further alleges that she was the most qualified senior employee and that UT breached its collective bargaining agreement when it promoted less senior employees over her. In that genuine issues of material fact exist as to these two claims, the court shall allow the plaintiff to proceed to trial on them.⁴ The defendants' motions

³Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, provides the basis for the claim against the employer, while the fair representation claim against the union is implied under the National Labor Relations Act. Hinton v. Teamsters Local Union No. 981, 818 F. Supp. 939, 941-42 (N.D. Miss. 1993) (citing DelCostello, 462 U.S. at 164.).

⁴See Rodeway Inns Int'l, Inc. v. Amar Enters., Inc., 742 F. Supp. 365, 369 n.5 (S.D. Miss. 1990) ("Even if a movant is entitled to summary judgment, a district court may, in its discretion, deny the motion in order to give the parties the chance to fully develop the facts at trial.") (citing Marcus v. St. Paul Fire & Marine Ins. Co., 651 F.2d 379 (5th Cir. Unit B

for summary judgment shall be denied as to Abrams' breach of duty of fair representation and breach of the collective bargaining agreement claims.

III. SECTION 1981 - RACE DISCRIMINATION CLAIM

Abrams also alleges that both the Union and UT discriminated against her because of her race in violation of 28 U.S.C. § 1981. That statute provides:

a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

b) Definition

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

28 U.S.C. § 1981 (Supp. 1994). Both defendants argue in their briefs that Abrams failed to demonstrate even a prima facie case of discrimination as set out by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973), and reaffirmed in St. Mary's Honor Ctr. v. Hicks, 509 U.S. ---, 113 S. Ct. 2742, 125 L.Ed.2d 407 (1993). Since no genuine issue of material fact exists as to this claim, according to the defendants, both the Union and UT are entitled to a judgment as a matter of law on this claim.

A. Direct Evidence

Abrams contests this conclusion by proffering what she alleges to be direct evidence of discrimination. Where such evidence is available, it is not necessary to consider the elements of a prima facie case. Portis v. First Nat'l Bank, 34 F.3d 325, (5th Cir. 1994). Abrams offers the

1981)).

following exchange that took place during Leonard Brown's⁵ deposition as direct evidence of discrimination:

Q. Did you ever tell Gayle Booker that she didn't want Thelma Abrams in that level four job because she was a white lady?

A. Yes, I think I said something to that effect.

Q. When did you tell her that?

A. In one of the steps of the grievance, meeting between the company and the union.

Q. Why did you tell her that?

A. Because she, I don't think it had been a white woman in a position, in a level four position to that, in that capacity. And I think she probably would have been the first.

Brown depo. at 25. However, when read in context, it becomes clear that those statements are not the claim-cinching admissions Abrams portrays them to be. The conversation about which Brown testified took place during one of the grievance steps when Brown was arguing on Abrams' behalf.

The testimony continues as follows:

Q. What other evidence did you have to support that statement you made?

A. I didn't have any other evidence. Just a statement.

* * * *

Q. Do you remember anything about what her response was?

A. To be honest, these cases get kind of heated. And, I mean, when you are involved in a case and it kind of, like this case here, it was a high profile case, and both sides, the temper kind of flares. So, I can't tell you everything that she said and what I said. But we was in the process of trying to pursue the case, and both sides want to be, want to win. So, you use every angle you can.

Brown depo. at 25, 27. Brown further expounded on his statements later in his deposition.

Q. Do you just say things that you have absolutely no factual basis for?

* * * *

A. I have no facts. In a case where you argue, I have no facts.

⁵Leonard Brown was a member of the Union's grievance committee until September, 1994.

Brown depo. at 36-37. Such conclusory allegations are insufficient to create a genuine issue of material fact as to this claim.⁶

B. Prima Facie Case

Abrams additionally argues that she has presented sufficient evidence from which a reasonable trier of fact could find that the elements of her prima facie case have been proved. Her basis for this assertion is the fact that a grievance filed by a black male was taken to arbitration while her grievance was withdrawn before arbitration.⁷ Abrams offers no statistical, circumstantial or direct evidence that grievances filed by blacks were more often retained through arbitration than grievances filed by whites. Furthermore, the record is bare of any admissible evidence that Abrams was individually discriminated against on account of her race. Without question, such sparse, or nonexistent, record evidence is insufficient to defeat the defendants' motion for summary judgment on this claim.

CONCLUSION

Due to the existence of genuine issues of material fact, the court shall deny the defendants' motions for summary judgment as to Abrams' claims of breach of the duty of fair representation and breach of the collective bargaining agreement. However, no genuine issues of material fact are evident from the record as to the plaintiff's racial discrimination claim and the defendants' motions as to it shall be granted.

⁶The plaintiff's assertion that one black co-employee allegedly told her "It's our time now" is insufficient on its face to create a genuine issue of material fact in reference to Abrams' discrimination claim.

⁷In this situation, a black male named Willie Williams, filed a grievance with the Union due to his discharge from UT. There is no record evidence showing that his grievance was taken to arbitration before Abrams' due to his race, and not due to the fact that discharge is a more serious situation than delay of promotion.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of April, 1996.

United States District Judge

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MOTOR SYSTEMS, INC.

DEFENDANTS

ORDER GRANTING IN PART DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, the court upon due consideration of the defendants' respective motions for summary judgment finds the motions partially well taken and the same shall be granted in part and denied in part.

It is therefore ORDERED that:

1) the motion of the defendant, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL-CIO, LOCAL NO. 794, for summary judgment be, and it is hereby, GRANTED insofar as the plaintiff's Section 1981 (race discrimination) claim.

2) the motion of the defendant, UNITED TECHNOLOGIES MOTOR SYSTEMS, INC., for summary judgment be, and it is hereby, GRANTED insofar as the plaintiff's Section 1981 (race discrimination) claim.

3) the plaintiff's Section 1981 (race discrimination) claims against the defendants, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED, MACHINE AND FURNITURE WORKERS, AFL-CIO, LOCAL NO. 794 and UNITED TECHNOLOGIES MOTOR SYSTEMS, INC. be, and are hereby, DISMISSED.

4) the motions of the defendants' for summary judgment on the plaintiff's remaining claims of breach of the duty of fair representation and breach of the collective bargaining agreement be, and are hereby, DENIED.

All memoranda, depositions, affidavits and other matters considered by the court in partially

granting the defendants' motions for summary judgment are hereby incorporated and made a part of the record in this cause.

SO ORDERED this ____ day of April, 1996.

United States District Judge